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JUL 28 2004

In re Application of	:	OFFICE OF PETITIONS
Chii-Chang Chen et al.	:	
Application No. 10/605,400	:	
Filed: February 17, 2004	:	DECISION ON SECOND
Attorney Docket No.	:	RENEWED PETITION
11142-US-PA	:	UNDER 37 C.F.R. §1.182
Title: BEAMSPLITTER UTILIZING A	:	
PERIODIC DIELECTRIC STRUCTURE	:	

This is a decision on the second renewed petition filed June 3, 2004, in which Petitioner requests that the decision of May 6, 2004 be vacated and the earlier filing date be accorded to the above-identified application.

On September 29, 2003, the above-identified application was deposited. On December 17, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Omitted Item(s) in a Non-provisional Application - Filing Date Granted (notice)", advising applicant that Figures 1A-1D appeared to have been omitted. The Notice set a two-month period for response.

On February 12, 2004, Petitioner submitted a response, along with Figures 1A-1D and payment of the petition fee. Based on Petitioner's statement of the resolution which she sought, it was clear that Petitioner accepted the date of deposit of the formerly omitted drawings as the filing date.

The original petition was received on February 17, 2004, and was dismissed via the mailing of a decision on April 16, 2004.

With the renewed petition, filed April 27, 2004, it was made clear that the drawings were received in the Office via facsimile transmission on February 12, 2004, and a second copy was subsequently received by mail on February 17, 2004. As such, the renewed petition was granted, and the application was accorded a filing date of February 17, 2004, using the drawings submitted on that date as well as the papers submitted on September 29, 2003.

With this second renewed petition, Petitioner has set forth that she has changed her mind, and now wants the earlier filing date. Petitioner has set forth that she wishes to delete the omitted items, "Figures 1B - 1D" (petition, page 1, emphasis added).

Petitioner's request cannot be granted. The notice of December 17, 2003 clearly sets forth that Figures 1A - 1D were omitted. If the Office were to grant this second renewed petition, accord the filing date of September 29, 2003, and delete Figures 1B - 1D, the Office would be according a filing date of September 29, 2003 to Figure 1A, which was not received in the Office until February 17, 2004. Clearly, this figure is not entitled to a filing date of September 29, 2003.

As such, the second renewed petition is **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Third Renewed Petition Under 37 C.F.R. 1.182". This is not a final agency action within the meaning of 5 U.S.C §704. If the earlier filing date is what Petitioner seeks, she should request that Figures 1A - 1D not be entered. Petitioner cannot have the earlier filing date assigned to a figure which was not present at that time.

The renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail¹, hand-delivery², or facsimile³.

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011.

Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.



Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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- 1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
 - 2 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.
 - 3 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned.